Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPLY COMMENTS OF MTPCS, LLC d/b/a CELLULAR ONE

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REPLY COMMENTS OF MTPCS, LLC D/B/A CELLULAR ONE

MTPCS, LLC d/b/a Cellular One and its affiliates (collectively, "MTPCS") hereby submit comments in response to the Further Notice of Proposed Rule Making *("Further Notice")* in the above-captioned docket.[1] MTPCS is a facilities-based rural wireless carrier providing switched wireless GSM and CDMA voice and data communications services over its networks of hundreds of cell sites in rural Montana, Wyoming, Texas, Louisiana, and the Gulf of Mexico. MTPCS is an active entrepreneur and a major employer, drives growth of infrastructure and communications options in the areas it serves.

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[1] / *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*CAF Order*" or "*FNPRM*").

Executive Summary

In order to recognize longstanding legislative goals of a competitive marketplace and to best serve the public interest in options for pricing, coverage, and services, MTPCS urges the Commission to adopt a cost model approach to awarding long term mobility support, with support made portable. In addition, the Commission should increase the size of the Mobility Fund in order to acknowledge that customers are increasingly observing and adopting the advantages of mobility. As Cisco Systems observes, during 2011–2016, "global mobile data traffic will outgrow global fixed data traffic by three times."[2] If the Commission does utilize auctions, a small business credit of 35% should be adopted, in order to decelerate the degradation of the competitive mobile services marketplace, while increasing auction participation in service of the goal of ubiquitous deployment of mobile services. There should be no letter of credit requirement, particularly for small and regional businesses, because such a requirement would deter private investment, whereas instead financial references could be required, and the Commission may impose forfeitures for noncompliance. Finally, any broadband buildout requirements should not exceed seventy-five percent of road miles.

I. The Commission Should Adopt Cost Models, Not Auctions, for the Second Mobility Support Mechanism.

Cost models and portability of support will permit a competitive marketplace to thrive, and will allocate the appropriate amount of funding to carriers currently providing valued services, including in many cases to public safety, hospitals, schools and community anchor institutions as well as private individuals and businesses enhancing state economic activity.

As Commissioner Clyburn has stated:

> The FCC is charged with the protection of consumers, and a natural by-product of that is the need to encourage competition. … When there is vibrant competition in the market, prices are lower, deployment increases, and innovation flourishes. Competition is a great disciplining force, but when it is reduced, it forces the government to play a bigger role. So my aim is to ensure that we set the stage for robust competition, which lessens the need for government intervention.

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[2] / *See id.*

"Robust Competition in the Wireless Industry is the Key to a Successful Marketplace," Boston, MA (April 8, 2011).

As the overall amount of support could remain capped in a portable cost model mechanism, for example with a CPI pegged annual inflation tracker, the Commission would control the size of the Fund without sacrificing cell sites, service quality, reasonable pricing, local jobs, and service options for consumers. The result would be a vibrant marketplace in service of the public interest.

The Commission should assess the mechanism for awarding long term mobility support after it has had the benefit of operating the first Mobility auction.[3] The information derived from that auction will show that the universal service context is better served by cost models, rather than reverse auctions. Auctions provide low cost results, and we appreciate that consideration, but other, important goals exist and ultimately outweigh the factor of low cost in this context. For example, legislative and agency goals require the universal service program to bring to consumers quality services, ubiquitous deployment of mobile service, and just, reasonable and affordable rates.[4] The balancing of goals requires adoption of cost models for the second set of mobility support awards, in order to ensure lasting service of the public interest, convenience and necessity.[5]

As noted in our prior comments, the public is increasingly and overwhelmingly adopting mobile rather than fixed services for high speed Internet access, downloads, applications and data transmissions, not just voice communications.[6] Mobile data traffic already exceeds fixed

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[3] / In the event this occasions delay, as T-Mobile and others believe it would, phasedowns in support must be paused concurrently, rather than continue the loss of support for networks that require that support in order to maintain rural operations. This corresponds with the concern expressed, for example, by RTG that rural areas will lose service unless safeguards are in place to ensure that existing services are not lost. Comments of RTG, at 3.

[4] / *See, e.g.*, 47 U.S.C. §§ 254(b)(1), 254(b)(3); *CAF Order/FNPRM*, at ¶¶ 52, 295, 298. *See also, e.g.*, Comments of the Cellular Telecommunications Industry Association (CTIA), at 4 (noting ubiquitous deployment goal).

[5] / *See* 47 U.S.C. § 254(b)(7).

[6] / *See also, e.g.*, the Cisco® Visual Networking Index (VNI) Global Mobile Data Traffic Forecast for 2011 to 2016 (Feb. 14, 2012) (*Cisco Forecast 2012*). Cisco forecasts that

data traffic.[7] This week, Cisco published its forecast that ***during 2011−2016, "global mobile data traffic will outgrow global fixed data traffic by three times."***[8] Real world mobile data growth requires realistic public policy. Favoring fixed conduits with rights of first refusal and moving mobility to a smaller fund would fail to acknowledge that the United States must adequately support mobility, not only in light of the agency's goal of ubiquitous mobile broadband, but also in acknowledgement that mobile services are the actual primary means of data transport. Rather, we urge the Commission to support United States mobile sector competitiveness, in accordance with the agency's goals of deploying ubiquitous mobile services, by providing sufficient support for the higher capacity equipment and complex operation and maintenance systems required for deployment of broadband, and by adopting cost models, portability, a sufficiently sized mobility fund for ongoing operations support, and no rights of first refusal for any technology group.

In the case of an ongoing support mechanism, auctions would remove support from currently utilized, desirable networks that with upgrades could rapidly become broadband facilities, simply because those providers could not bid as low as a nationwide company that has not previously entered the area. This high cost support change would disrupt service to consumers, interrupt economic investment in the area, reduce the local jobs that are a hallmark of small and regional providers,[9] and create market uncertainty, as noted by T-Mobile and US Cellular, among others.

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worldwide mobile data traffic will increase 18-fold over the next five years, reaching 10.8 exabytes per month -- or an annual run rate of 130 exabytes -- by 2016.

[7] / OECD data, for example, shows that as of December 2010, the number of wireless broadband subscriptions in the United States was approximately 165.4 million, in contrast to approximately 85.7 million fixed broadband subscriptions. *See* OECD Broadband Portal 1(c), available at http://bit.ly/wXtlP9 and http://www.oecd.org/dataoecd/22/15/39574806.xls ; *see also* Wireless Broadband Subscriptions Top Half a Billion, Says OECD (December 2010), available at http://bit.ly/loSWE2

[8] / *See id.*

[9] / MTPCS and its affiliates, for example, have more local retail stores than their competitors in each area served, and also provide one hundred percent domestic U.S. call center jobs. Moreover, small and regional carriers have outperformed most large carriers in customer service surveys that include both sizes of carriers, as noted in our previous comments. Other carriers make use of international call center support and few if any stores to provide personal

Cost models, instead, should be used to determine ongoing support for mobile operations in high cost areas. Commenters including CTIA, RCA, RTG, US Cellular, C Spire and the Nebraska Public Service Commission[10] believe reverse auctions are not appropriate in the universal service context, and many expressly stated that they instead favored adoption of a model-based approach.

Cost models are not appropriate, however, to set a ceiling on support. This would result in abuses whereby larger carriers or other competitors bid support down below the level that is needed. The winning bidder may accept a slow financial decline due to the lack of support, leading to poorer service to its rural customers, because the alternative would be no support and a faster demise.

II. Portability of Support Will Best Further Legislative Goals.

A. Portability Is Required by The 1996 Act And Supported by The Fifth Circuit Court of Appeals.

Commenters agree that as part of a cost model based approach, portability, rather than one carrier per area, will best ensure that consumers continue to receive competitive options.[11] As noted by C Spire, a single auction winner is not consistent with the 1996 Act that "established principles for preservation and advancement of universal service in a competitive telecommunications environment…"[12] In fact, *funding portability is specifically required by the*

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customer service in rural areas. These choices, while equally valid, are different and accordingly do not provide a "duplicative" network experience for their customers vis-à-vis local and regional carrier services.

[10]/ Comments of CTIA at 6, RCA at 10-23, RTG at 3, United States Cellular at 6, 13-16, 19, C Spire at 7-22 (a cost model would advance competitive neutrality, result in lower prices to consumers, more reliable and better quality and more extensive broadband service, promote private investment, effectively operate as a funding cap for each eligible service area, and ensure service in unserved communities) and the Nebraska Public Service Commission at 8 ("the use of a competitive bid process will result in a 'race to the bottom' in terms of service quality and will not advance universal service").

[11] / *See, e.g.,* Comments of C Spire at 18, 38, RCA at 13, United States Cellular at 20-24.

[12] / Comments of C Spire, at 16.

1996 Act and the Fifth Circuit Court of Appeals supports that position.[13] Moreover, a single winner auction could result in a Commission-mandated dominant market position in a funded service area that would generate strong incentives for anti-competitive conduct.[14] The Commission should not place a finger on the scales, by permitting current economic strength of a carrier to dictate whether it will receive more (and, in the case of the largest carriers, unnecessary) financial strength from the federal government. Rather, small and regional competitors, whose services are also desired and utilized by customers, should be permitted to continue offering those services and to upgrade networks for modern broadband capacity. As T-Mobile states, "a properly constructed cost model along the lines of the US Cellular and MTPCS models could promote competitive neutrality, provide proper investment incentives and increase competition."[15]

B. Different Networks Provide Customers with Different Coverage, Pricing, Services and Other Attributes. They Are Not Duplicative. Portability Serves the Public Interest Better than Network Eradication in Overlap Areas.

i. Portability Accommodates the Pro-Competitive Intent of Congress in Adopting the 1996 Act.

Portability does not tend to lead to duplicative investment, because different providers often share the highest cost investment – the tower – while providing networks that meet differing customer needs: service in some different areas, service utilizing technologies with particular attributes, lower cost service, a retail store nearby to accept person bill payments or other customer needs, differing business services or more applications, etc. To believe some adjacent facilities render networks identical and accordingly not worthy of support, would be to believe customers have no reasons for choosing different providers – and would reject the policy and beneficial results of competition that have been the hallmark of amendments to the Communications Act for the past 20 years.[16] Rather, it is logical to divide up the support in

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[13] / *Id.*, at 18.

[14] / *Id.*, at 17.

[15] / Comments of T-Mobile, at 4.

[16] / *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8781-82 (para. 4) (1997) ("*First Report and Order*") (subsequent

areas with network overlap, leaving the carriers to make what should be their private business decision: whether to receive the lower amount and make up the differential with private investment, or to strand their customers – and risk losing other customers who drive in these areas - by leaving those high cost areas due to the unfortunate financial reality of serving high cost markets.

We are confident the Commission will choose to fulfill legislative intent and purpose by focusing on "***Congress's goal of establishing a 'pro-competitive, de-regulatory national policy….***'"[17] Portability of support will best permit competition without causing long term increases in Fund size, degradation of existing networks, customer service, local jobs and infrastructure. If cost inputs are based upon a realistic cost model that takes into account size,

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history omitted) (footnotes omitted) (quoting Joint Explanatory Statement of the Committee of the Conference (H.R. Rep. No. 458, 104th Cong., 2d Sess.), at 1) ("[t]his proceeding is part of a trilogy of actions that are focused on achieving Congress's goal of establishing a '*pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition.'* The other components of the trilogy are the local competition and access reform rulemakings. Pursuant to the mandate of the 1996 Act, these three proceedings are collectively intended to encourage the development of competition in all telecommunications markets.").

The FCC said: "[w]hen it enacted section 254 of the Communications Act, Congress set forth the principles to guide universal service reform. It **placed on the Commission the duty to implement these principles in a manner consistent with the pro-competition purposes of the Act."** *Id*. at 8783 (para. 7) (emphasis supplied).

[17] / *See id.* In addition, the Commission has stated:

> In passing the Telecommunications Act of 1996 (1996 Act),2 Congress sought to establish "a **pro-competitive, deregulatory** national policy framework" for the United States telecommunications industry. In the 1996 Act, Congress also directed that universal service support "should be explicit and sufficient to achieve the purposes" of section 254, 3 which include the purpose that all Americans should have access to telecommunications services at affordable and reasonably comparable rates. Therefore, with this Order, we take action designed to further accelerate the development of competition in the local and long-distance telecommunications markets, and to establish an explicit interstate access universal service support mechanism that will be sustainable in an increasingly competitive marketplace.

Eleventh Report & Order, CC Docket No. 96-45, FCC 00-193, ¶ 4 (2000) (emphasis supplied).

technology choice, and purchasing power of the carrier, the result will drive efficiency while avoiding small business network turndowns, job and economic growth loss, and customer stranding from wholesale withdrawal of support. United States Cellular notes that single provider support would not be competitively neutral as required by statute, but instead installs a government-selected monopoly provider in each service area.[18]

As stated by the Nebraska Public Service Commission, T-Mobile, US Cellular and others,[19] rather than determining areas with an unsubsidized competitor,

> a more administratively efficient course of action would be to identify high-cost areas using density and cost characteristics and targeting high-cost support to those areas. The Commission should refrain from directing high-cost support to densely populated areas where competition is more likely. The fact that there are areas with or without unsubsidized competitors may change because of events wholly unrelated to the existence of high-cost universal service support.

Comments of the Nebraska Public Service Commission, at 4.

III. The Mobility II Mechanism Should Award An Accurately Sized Fund, Should Facilitate Small Business Participation With a Bidding Credit and Alternate Financial Assurances, and Should Result in Reasonable Buildout Requirements.

A. Long Term Mobile Support Should Accurately Reflect The Need for Infrastructure to Accommodate Usage: Mobile Data Use Has Outpaced Fixed Data And Will Continue To Do So.

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[18] / Comments of United States Cellular at 22. *See also, e.g.,* Comments of T-Mobile at 4 & n. 14 (*citing, e.g., Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 616, 620-22 (5th Cir. 2000)):

> Whether Phase II support is allocated to one recipient or to multiple recipients in the same service area, however, the distribution of support should be structured so as to satisfy the statutory competitive neutrality and portability requirements without threatening the viability of the Mobility Fund.

[19] / *See* Comments of Nebraska Public Service Commission at 4, C Spire at 18, 38, RCA at 13, United States Cellular at 20-24.

As we just noted, mobile data far outpaces the data carried by fixed networks. Accordingly, funds are needed for operating and upgrading the necessary infrastructure. The cost study submitted by CTIA showed that the Fund size allocated for mobility is far, far less than the amounts needed. As C Spire observes, mobile broadband is underfunded compared with landline services, and the Commission should provide additional support in order to serve the President's objectives for high-speed mobile broadband deployment.[20]

B. Support Should Facilitate Small Business Participation.

i. A bidding credit could effectively facilitate the ability of small carriers to participate in auctions.

The Commission asked whether a **bidding credit** would be "an effective way to help address concerns regarding smaller carriers' ability to effectively compete at auction for support." [21] A bidding credit would effectively address such concerns, if accompanied by an infrastructure of rules that sufficiently enable such carriers to compete.[22] We believe a 35 percent credit would be optimum in light of the very significant size and resources disparity between the largest wireless carriers and the remaining smaller carriers in this industry.

The Commission asked whether such credits would meet its goal of nationwide coverage. In light of the antitrust framework that governs the Commission's teamwork with the Department of Justice, as well as the clear dictates in the Small Business Act, it is evident that a bidding credit for small businesses will help the Commission meet critical antitrust goals of avoiding further acceleration of the rapidly concentrating mobile services marketplace, while preserving participation in the mobile sector by small businesses. In addition, the bidding credit would help existing small carriers meet the agency's goal of ubiquitous mobile coverage.

In addition, the Commission asked whether a bidding credit for small businesses should be based upon the current SBA definition, set forth at 13 C.F.R. § 121.201, the gross revenues standard from the early broadband PCS auctions' "entrepreneur" definition, or some alternate

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[20] / Comments of C Spire, at 30. *See also, e.g.,* Comments of RCA, at 8.

[21] / *See CAF FNPRM,* at ¶ 1157.

[22] / For example, small businesses should not be subjected to letters of credit requirements, as discussed *supra.*

basis.[23] Respectfully, in light of the existence now of an official, current definition from the expert agency on small businesses, MTPCS urges the Commission to adopt that agency's definition. Should the Commission instead prefer a revenue standard, we urge adoption of a standard accommodating the almost fifteen years since the broadband PCS standard was adopted. The disparity in size between the largest carriers and current small businesses is extreme, but as the large businesses have grown, the small companies have as well. Gross revenues of $200 million would be more in keeping with a modern small business in this industry. In light of the increased expense, over time, of keeping up with technology improvements, public safety requirements, network security, law enforcement needs, data and billing platforms expense, cell site land or lease payments, vendor-required maintenance plan expense, and the very high cost of special access facilities, among other costs, gross revenues have increased over those intervening years, maintaining the ability to pay these expenses.

ii. Letters of credit requirements, conversely, may keep small carriers from participating in auctions.

If an auction occurs, small companies should be required to provide sound credit references from financial institutions, but not guarantees, letters of credit, or the like.[24] Letters of credit hinder the ability of regional and smaller companies to secure private ongoing financing. As stated by the Indiana commission, "Imposing an irrevocable standby letter of credit for carriers receiving Universal Service support could place further financial strain on already stressed companies."[25] Previous buildout requirements without such securities have resulted in compliance by the vast majority of licensees, and these good actors, if they bid in this auction, should not now be deemed guilty until they prove themselves innocent. Rather, forfeitures for noncompliance – along with, if the noncompliance is significant and material,

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[23] / *CAF FNPRM,* at ¶ 1160.

[24] / *See also, e.g.,* Comments of United States Cellular at 50, USA Coalition at 27 (letter of credit requirement would be unduly burdensome).

[25] / Comments of the Indiana Utility Regulatory Commission, at 7.

even sterner measures such as a reduction in support - would avoid hindering regular business financing during the years while companies are constructing their required broadband.[26]

iii. Broadband buildout requirements must be reasonable.

Any broadband buildout requirements should not exceed 75% of road miles. To date, few carriers have been able to meet the higher buildout requirements in Montana. That Western state contains massive, rocky mountains, extensive national parklands with very rare site location permits, and extreme weather conditions, such as frequent ice storms in its long winter, requiring site location that avoids avalanche areas. We believe that 75% provides reasonable acknowledgement of terrain, site location and weather realities, which vary from state to state but generally impede additional coverage.

Conclusion.

In light of the foregoing, MTPCS respectfully urges the Commission to adopt a cost model approach to awarding long term mobility support, increase the size of the mobility fund, and make support portable. In the event the Commission does adopt auctions, we urge the agency to provide a small business credit in order to counterbalance the vastly greater resources of the nationwide companies and ensure that small businesses have an effective opportunity to participate in high cost area support. Similarly, there must be no letter of credit requirement, particularly for small and regional businesses, because such a requirement would deter private investment needed for the very construction required. Instead, the Commission could require provision of financial references, and also could impose forfeitures for noncompliance. Finally,

[26] / Forfeitures are also supported by United States Cellular, at 50, as a superior alternative to letters of credit.

any broadband buildout requirements should be rational and recognize the realities of terrain, weather and other site location conditions, as set forth in the foregoing Reply Comments.

Respectfully submitted,

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